

# Animal Law



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## Cases and Materials

SIXTH EDITION

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CAROLINA ACADEMIC PRESS  
Durham, North Carolina

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ISBN 978-1-5310-1099-7  
e-ISBN 978-1-5310-1100-0  
LCCN 2018967081

Carolina Academic Press  
700 Kent Street  
Durham, North Carolina 27701  
Telephone (919) 489-7486  
Fax (919) 493-5668  
[www.cap-press.com](http://www.cap-press.com)

Printed in the United States of America

# Summary of Contents

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Table of Cases	ix
Preface to the First Edition, 2000	xxxix
Preface to the Sixth Edition	xxxv
Acknowledgments	xxxvii
Editors' Note	xxxvix
Chapter 1 • What Is an Animal?	3
Chapter 2 • Property and Beyond: The Evolution of Rights	47
Chapter 3 • Criminal Law	83
Chapter 4 • Torts	233
Chapter 5 • Constitutional Law	363
Chapter 6 • Commercial Uses of Animals	485
Chapter 7 • Contracts	699
Chapter 8 • Wills and Trusts	759
Chapter 9 • Selected Wildlife Statutes	805
Appendix A	901
Appendix B	903
Index	907



# Contents

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Table of Cases	ix
Preface to the First Edition, 2000	xxxix
Preface to the Sixth Edition	xxxv
Acknowledgments	xxxvii
Editors' Note	xxxvix
<b>Chapter 1 • What Is an Animal?</b>	<b>3</b>
Section 1. Defining "Animal"	3
<i>Knox v. Massachusetts Soc'y for the Prevention of Cruelty to Animals</i>	3
Notes	5
<i>Lock v. Falkenstine</i>	6
Notes	10
<i>State v. Cleve</i>	12
Notes	16
Section 2. Classifications of Animals	18
<i>U.S. v Park</i>	18
Notes	21
<i>Eldorado Improvement Association, Inc. v. Billings</i>	23
Notes	27
<i>Holcomb v. Van Zylén</i>	27
Notes	28
<i>Commonwealth v. Massini</i>	29
<i>Commonwealth v. Comella</i>	30
Notes	32
<i>City of Rolling Meadows v. Kyle</i>	39
Notes	42
<b>Chapter 2 • Property and Beyond: The Evolution of Rights</b>	<b>47</b>
Section 1. Slaves	47
Notes	51
Section 2. Women	53
Section 3. Children	56
Notes	59

Section 4. Humans with Severe and Permanent Cerebral Impairments	60
Notes	64
Section 5. Potential Humans—Fetuses, Embryos and Prezygotes: Property, Persons or Something in Between?	64
Section 6. Nonhumans	70
Notes	80
<b>Chapter 3 • Criminal Law</b>	<b>83</b>
Section 1. Historical Perspective	83
The Criminal Prosecution and Capital Punishment	83
Notes	87
Section 2. State Anti-Cruelty Statutes	92
A. Introduction	92
B. Common Provisions	92
C. Common Exemptions	94
D. Issues and Challenges Facing Prosecutors and Law Enforcement	97
E. Special Procedural Issues in Animal Cruelty Cases	98
Section 3. Animals as “Victims” of Crimes	100
<i>State v. Nix</i>	101
Notes	106
<i>Prichard v. State</i>	107
Notes	112
Section 4. Affirmative Acts of Cruelty	115
<i>Oliver v. City of Anaheim</i>	116
Notes	117
<i>People v. Voelker</i>	118
Notes	121
<i>People v. Dunn</i>	122
Notes	123
<i>People v. Garcia</i>	126
Notes	129
<i>Waters v. People</i>	129
Notes	134
Section 5. Failure to Act	134
<i>State v. Hershey</i>	134
Notes	138
<i>State v. Newcomb</i>	139
Note	146
<i>Martinez v. State of Texas</i>	147
Notes	150
<i>People v. Brian</i>	150
Notes	152
Section 6. Hoarding	154
<i>People v. Riazati</i>	155
Notes	164



<i>People v. Youngblood</i>	169
Notes	172
Section 7. Restitution and Costs of Care	173
Note	174
Section 8. Animals in Sport and Entertainment	175
A. Hunting	176
<i>State v. Kuenzi</i>	176
Notes	182
<i>Boushehry v. State</i>	183
Notes	185
B. Rodeos and Bull Runs	187
C. Animal Racing	190
Notes	192
D. Breeding, Veterinary and Shelter Issues	194
<i>Hammer v. American Kennel Club</i>	194
Notes	196
<i>California Veterinary Medical Ass'n v. City of West Hollywood</i>	196
Notes	202
E. Television, Film, Zoos, Circuses and Aquaria	205
Notes	207
<i>People v. Thomason</i>	211
Notes	215
F. Animal Fighting	216
1. Cockfighting	216
2. Dogfighting	217
<i>Ash v. State</i>	217
Notes	219
Section 9. Cross-Protecting: The Link between Animal Abuse and Human Violence	222
A. Introduction	222
B. Case Law	226
<i>Schambon v. Commonwealth</i>	226
Notes	229
<i>State v. Thompson</i>	230
Note	232
<b>Chapter 4 • Torts</b>	<b>233</b>
Section 1. Theories of Liability	233
A. Intentional Torts	234
<i>Plotnik v. Meihaus</i>	234
Notes	238
<i>Burgess v. Taylor</i>	241
Notes	244
B. Negligence	246
<i>McDougall v. Lamm</i>	246

Notes	253
C. Fourth Amendment Claims for Tortious Harm to Companion Animals by Public Officials	256
<i>Carroll v. County of Monroe</i>	261
Notes	265
Section 2. Veterinary Malpractice	267
<i>Price v. Brown</i>	268
Notes	271
Section 3. Damages and Valuation	278
<i>La Porte v. Associated Independents, Inc.</i>	279
Notes	282
<i>Corso v. Crawford Dog and Cat Hospital, Inc.</i>	285
Notes	286
<i>Brousseau v. Rosenthal</i>	289
Notes	291
<i>Strickland v. Medlen</i>	302
Notes	311
<i>Barking Hound Village LLC v. Monyak</i>	316
Notes	320
Section 4. Competing Interests: Companion Dogs and Farm Animals	333
<i>Katsaris v. Cook</i>	333
Notes	339
Section 5. Injuries Caused by Animals	342
<i>Baugh v. Beatty</i>	343
Notes	345
<i>Drake v. Dean</i>	348
Notes	354
<b>Chapter 5 • Constitutional Law</b>	<b>363</b>
Section 1. Legal Standing, Justiciability and Other Limiting Doctrines	363
<i>Jones v. Beame</i>	364
Notes	367
<i>Sierra Club v. Morton</i>	368
Notes	375
<i>Lujan v. Defenders of Wildlife</i>	381
Notes	385
<i>The Humane Society of the United States v. United States         Postal Service</i>	387
Note	391
<i>Animal Legal Defense Fund v. Espy</i>	392
Notes	396
<i>Cetacean Community v. Bush</i>	398
Notes	403
<i>Animal Legal Defense Fund v. Glickman</i>	405
Notes	421

Section 2. Due Process—Challenges and Claims	428
<i>American Dog Owners Association v. The City of Yakima</i>	428
Note	430
<i>Garcia v. The Village of Tijeras</i>	431
Notes	437
Section 3. First Amendment	442
A. Free Exercise of Religion	442
<i>Church of the Lukumi</i>	442
Notes	455
B. Freedom of Speech	459
<i>U.S. v. Stevens</i>	459
Notes	470
<i>Dorman v. Satti</i>	471
Note	476
<i>State v. Miner</i>	477
Notes	482
<b>Chapter 6 • Commercial Uses of Animals</b>	<b>485</b>
Section 1. Animals Raised and Slaughtered for Food	485
A. Conditions Under Which Animals Are Raised	486
<i>New Jersey Society for the Prevention of Cruelty to Animals</i>	
<i>v. New Jersey Department of Agriculture</i>	488
Notes	512
<i>Missouri ex rel. Koster v. Harris</i>	515
Notes	518
<i>Association des Eleveurs de Canards et d'Oies du</i>	
<i>Quebec v. Becerra</i>	520
Notes	531
<i>Animal Legal Defense Fund v. U.S. Dept. of Agriculture</i>	535
Note	537
<i>Humane Society of Rochester and Monroe County for</i>	
<i>Prevention of Cruelty to Animals, Inc. v. Lyng</i>	538
Notes	543
<i>Animal Legal Defense Fund Boston, Inc. v. Provimi Veal Corp.</i>	547
Notes	555
<i>Compassion Over Killing v. U.S. Food &amp; Drug Administration</i>	559
Notes	563
B. Slaughter Laws and Related Issues	578
<i>Jones v. Butz</i>	582
Notes	590
<i>Cavel International, Inc. v. Madigan</i>	595
Notes	600
<i>National Meat Association v. Harris</i>	605
Notes	612
C. “Ag-Gag” Laws	619

<i>Animal Legal Defense Fund v. Herbert</i>	620
Notes	636
Section 2. Animals in Research and the Animal Welfare Act	639
A. Scientific, Legal and Public Debate	639
B. AWA History and Overview	644
C. Nonhuman Primates	647
<i>Animal Legal Defense Fund, Inc. v. Glickman</i>	647
Notes	653
D. Breeders, Dealers and Puppy Mills	654
<i>Associated Dog Clubs of New York State, Inc. v. Vilsack</i>	654
Notes	659
<i>New York Pet Welfare Association v. City of New York</i>	662
Notes	671
E. Animal Cruelty	680
<i>Taub v. State</i>	680
Notes	683
F. Disclosure of Information	685
<i>Hagan v. Feld Entertainment, Inc. d/b/a Ringling Bros. and Barnum &amp; Bailey Circus</i>	688
Notes	692
G. Animal Exhibition under the AWA	697
<b>Chapter 7 • Contracts</b>	<b>699</b>
Section 1. Housing Issues	699
A. Pet Restrictions in Leases and Community Developments	699
<i>Young v. Savinon</i>	699
Notes	703
B. Exceptions to Pet Restrictions in Housing: “Service” and “Support” Animals	711
Notes	715
Section 2. “Service” and “Support” Animals in Contexts Other Than Housing	722
Notes	723
Section 3. Dissolution of Marriage and Other Relationships:	
Custody Disputes	726
<i>Akers v. Sellers</i>	727
<i>Bennett v. Bennett</i>	728
<i>Arrington v. Arrington</i>	729
<i>In re The Marriage of Stewart</i>	730
Note	731
<i>Houseman v. Dare</i>	731
Notes	735
<i>Travis v. Murray</i>	736
Notes	744

<i>Hennett v. Allan</i>	745
Notes	747
Section 4. The Sale of “Goods” and “Products”	750
Section 5. Insurance	754
<b>Chapter 8 • Wills and Trusts</b>	<b>759</b>
Section 1. Validity of Will Provisions: Historical Perspective	759
A. Will Provisions Providing for the Destruction of Companion Animals upon the Testator’s Death	759
<i>In re Capers Estate</i>	759
Notes	765
<i>In re Estate of Howard H. Brand</i>	765
Notes	770
B. Will Provisions Providing for the Care of Companion Animals upon Testator’s Death: The Rule Against Perpetuities	773
Notes	778
<i>In re Estate of Searight: Department of Taxation of Ohio</i>	779
Notes	784
Section 2. Companion Animal Trusts	786
<i>In re Estate of Russell</i>	787
Notes	791
<i>In re Stewart’s Estate</i>	791
Notes	793
<b>Chapter 9 • Selected Wildlife Statutes</b>	<b>805</b>
Section 1. Endangered Species Act	806
<i>Tennessee Valley Authority v. Hill</i>	811
Notes	817
<i>Babbitt v. Sweet Home Chapter of Communities             for a Great Oregon</i>	819
Notes	828
<i>Humane Society of the United States v. Zinke</i>	831
Notes	839
Section 2. National Environmental Policy Act	840
Notes	848
<i>Winter v. Natural Resources Defense Council, Inc.</i>	854
Notes	861
Section 3. Marine Mammal Protection Act	862
<i>Committee for Humane Legislation v. Richardson</i>	862
Notes	869
<i>Animal Welfare Institute v. Kreps</i>	874
Notes	880
Section 4. Wild Free-Roaming Horses and Burros Act	882
<i>Colorado Wild Horse and Burro Coalition, Inc. v. Salazar</i>	883
Notes	890

<i>Fallini v. Hodel</i>	894
Notes	899
Appendix A	901
Appendix B	903
Index	907

# Table of Cases

---

Principal cases are listed in italics, while cases cited in the editors' notes and footnotes are not. Where a principal case is also referenced in the notes or footnotes, the principal pages are also italicized.

- 1700 York Assocs. v. Kaskel, N.Y.S.2d 233 (N.Y.C. Civ. Ct. 1999): 44
- Advisory Opinion to the Atty General Re: Limiting Cruel & Inhumane Confinement of Pigs During Pregnancy, 815 So. 2d 597 (Fla. 2002): 513
- Aegis Security Ins. Co. v. Pennsylvania Ins. Dept., 798 A.2d 330 (Pa. Commw. Ct. 2002): 755
- Africa v. Com. of Pa., 662 F.2d 1025 (3d Cir. 1981): 457
- Aguillard v. Madura, 257 S.W.3d 494 (Tex. Ct. App. 2008): 279
- Akers v. Sellers, 54 N.E.2d 779 (Ind. Ct. App. 1994): 727–28
- Alaska Fish & Wildlife Federation v. Dunkle, 829 F.2d 933 (9th Cir. 1987): 380
- Alice C. v. Bernard G.C., 602 N.Y.S.2d 623 (App. Div. 1993): 59
- Alpert v. Thomas, 643 F. Supp. 1406 (D. Vt. 1986): 752
- Alternative Research & Dev. Found. v. Glickman, 101 F. Supp. 2d 7 (D.D.C. 2000): 423, 645
- Altman v. City of High Point, N.C., 330 F.3d 194 (4th Cir. 2003): 260
- Amadio v. Levin, 501 A.2d 1085 (Pa. 1985): 67
- Amaker v. Kings County, 540 F.3d 1012 (9th Cir. 2008): 287
- Amburgey v. Sauder, 605 N.W.2d 84 (Mich. Ct. App. 1999): 361
- American Colonization Soc'y v. Gartrell, 23 Ga. 448 (1857): 51
- American Dog Owners Ass'n v. City of Lynn, 533 N.E. 2d 642 (Mass. 1989): 430, 439
- American Dog Owners Ass'n v. City of Yakima*, 777 P.2d 1046 (Wash. 1989): 428–30
- American Horse Protection Ass'n v. United States, 551 F.2d 432 (D.C. Cir. 1977): 891
- American Soc'y for the Prevention of Cruelty to Animals v. Feld Entertainment, 659 F.3d 13 (D.C. Cir. 2011): 425
- American Soc'y for the Prevention of Cruelty to Animals v. Feld Entertainment, 677 F. Supp. 2d 55 (D.D.C. 2011): 425
- American Soc'y for the Prevention of Cruelty to Animals v. Ringling Bros. & Barnum & Bailey Circus, 2007 WL 625937 (D.D.C. Feb. 26, 2007): 425
- American Soc'y for the Prevention of Cruelty to Animals v. Ringling Bros. & Barnum & Bailey Circus, 2007 WL 4261699 (D.D.C. Dec. 3, 2007): 425
- American Soc'y for the Prevention of Cruelty to Animals v. Ringling Bros.

- & Barnum & Bailey Circus, 244 F.R.D. 49 (D.D.C. 2007): 425
- American Soc’y for the Prevention of Cruelty to Animals v. Ringling Bros. & Barnum & Bailey Circus, 502 F. Supp. 2d 103 (D.D.C. 2007): 425
- American Soc’y for the Prevention of Cruelty to Animals v. Ringling Bros. & Barnum & Bailey Circus, 317 F.3d 334 (D.C. Cir. 2003): 424
- Ammon v. Welty, 113 S.W.3d 185 (Ky. Ct. App. 2002): 296–97
- Anderson v. Christopherson, 816 N.W.2d 626 (Minn. 2012): 356–57
- Anderson v. City of Blue Ash, 798 F.3d 338 (6th Cir. 2015): 725–26
- Anderson v. Evans, 314 F.3d 1006 (9th Cir. 2003): 853, 873
- Anderson v. Farmers Hybrid Co., 408 N.E.2d 1194 (Ill. App. Ct. 1980): 751
- Animal Hosp. of Elmont, Inc. v. Gianfrancisco, 418 N.Y.S. 2d 992 (Nassau Cnty. Dist. Ct. 1979): 273, 291–92, 296
- Animal Legal Defense Fund v. Cal. Expositions & State Fairs, 239 Cal. App. 4th 1286 (2015): 208
- Animal Legal Defense Fund v. Corcpork, Case No. SCV 240050 (Cal. Super. Ct., Sonoma Cty.) (complaint filed Jan. 18, 2007): 566
- Animal Legal Defense Fund v. Espy*, 23 F.3d 496 (D.C. Cir. 1994): 16–17, 392–96, 423, 644
- Animal Legal Defense Fund v. Estate of Connie Ley and Doug Denmure, Cause No. 15C01-1412-MI-090 (Ind. Cir. Ct., Dearborn Cty. Jul. 6, 2015): 773
- Animal Legal Defense Fund v. Glickman*, 154 F.3d 426 (D.C. Cir. 1998): 405–21
- Animal Legal Defense Fund v. Glickman*, 204 F.3d 229 (D.C. Cir. 2001): 647–52
- Animal Legal Defense Fund v. Great Bull Run, LLC, 2014 WL 2568685 (N.D. Cal. June 6, 2014): 189, 392
- Animal Legal Defense Fund v. Herbert*, 263 F. Supp. 3d 1193 (Dist. Utah, 2017): 620–36
- Animal Legal Defense Fund v. LT Napa Partners LLC, 234 Cal. App. 4th 1270 (2015): 532
- Animal Legal Defense Fund v. Madigan, 781 F. Supp. 797 (D.D.C. 1992): 644
- Animal Legal Defense Fund v. Mendes, 160 Cal. App. 4th 136 (2008): 545–46, 566
- Animal Legal Defense Fund v. Otter, 118 F. Supp. 3d 1195 (D. Idaho 2015): 620, 638
- Animal Legal Defense Fund v. Provimi Veal, 626 F. Supp. 278 (D. Mass. 1986): 684
- Animal Legal Defense Fund v. Reynolds, 297 F. Supp. 3d 901 (S.D. Iowa 2018): 676–77
- Animal Legal Defense Fund, et al. v. Sidney Jay Yost, Civil Case No. ED CV 05–01066 RGK (E.D. Cal., filed Nov. 23, 2005): 208
- Animal Legal Defense Fund v. USDA*, 223 F. Supp. 3d 1008 (C.D. Ca. 2016): 535–37
- Animal Legal Defense Fund v. USDA, 632 Fed. App’x 905 (9th Cir. 2015): 534
- Animal Legal Defense Fund v. USDA, 2013 U.S. Dist. LEXIS 40547 (C.D. Cal. Mar. 22, 2013): 534
- Animal Legal Defense Fund v. Wasden, 878 F.3d 1184 (9th Cir. 2018): 620, 636–37
- Animal Legal Defense Fund v. Woodley, 640 S.E.2d 777 (N.C. Ct. App. 2007): 165
- Animal Legal Defense Fund Boston, Inc. v. Provimi Veal Corp.*, 626 F. Supp. 278 (D. Mass. 1986): 531–32, 547–55



- Animal Lovers Volunteer Ass'n v. Carlucci*, 849 F.2d 1475 (9th Cir. 1988): 379
- Animal Lovers Volunteer Ass'n v. Weinberger*, 765 F.2d 937 (9th Cir. 1985): 378
- Animal Protection Institute of America, Inc. v. Babbitt*, No. CV-R85-365-HDM (D. Nev. filed Oct. 15, 1997): 892
- Animal Protection Institute of America, Inc. v. Hodel*, 860 F.2d 920 (9th Cir. 1988): 890
- Animal Protection Institute of America, Inc. v. Mosbacher*, 799 F. Supp. 173 (D.D.C. 1992): 881–82
- Animal Welfare Institute v. Feld Entertainment, Inc.*, 944 F. Supp. 2d 1 (D.D.C. 2013): 425
- Animal Welfare Institute v. Kreps*, 561 F.2d 1002 (D.C. Cir. 1977): 594, 874–80
- Anzalone v. Kragness*, 826 N.E.2d 472 (Ill. App. Ct. 2005): 314, 327
- Arendes ex rel. Arendes v. Lee County*, 899 So. 2d 493 (Fla. Ct. App. 2005): 285
- Arrington v. Arrington*, 613 S.W.2d 565 (Tex. App. 1981): 729–30
- Ash v. State*, 290 Ark. 278, 718 S.W.2d 930 (Ark. 1986): 217–19
- Asian American Rights Committee of California v. Edmund Brown et al.*, Case No. CGC-12–517723 (Cal. Super. Ct., San Francisco County, complaint filed Jan. 27, 2012): 619
- Associated Dog Clubs of New York State, Inc. v. Vilsack*, 75 F. Supp. 3d 83 (Dist. Columbia, 2014): 654–59
- Association des Eleveurs de Canards et D'oies du Quebec v. Becerra*, 870 F.3d 1140 (9th Cir. 2017): 520–530
- Association des Eleveurs de Canards et D'oies du Quebec v. Harris*, 729 F.3d 937 (9th Cir. 2013): 520
- Association of Apartment Owners of Lilliuokalani Gardens at Waikiki v. Taylor*, 892 F. Supp. 2d 1268 (D. Haw. 2012): 714–15
- Association of Data Processing Serv. Orgs., Inc. v. Camp*, 397 U.S. 150 (1970): 397
- Astarita v. Croton Animal Hospital*, 2016 N.Y. Misc. LEXIS 3311 (N.Y. City Ct., Westchester Cty. Sept. 19, 2016): 276
- Auburn Woods I Homeowners Ass'n v. Fair Employment and Housing Comm'n*, 121 Cal. App. 4th 1578 (2004): 717–18
- Avenson v. Zegart*, 577 F. Supp. 958 (D. Minn. 1984): 659
- Babbitt v. Sweet Home Chapter of Communities for a Great Oregon*, 515 U.S. 687 (1995): 819–28
- Baker v. Carr*, 369 U.S. 186 (1962): 367
- Balelo v. Baldrige*, 724 F.2d 753 (9th Cir. 1984): 871
- Banasczek v. Kowalski*, 10 Pa. D. & C. 3d 94 (Luzerne Cty. 1979): 238
- Barking Hound Village LLC v. Monyak*, 299 Ga. 144, 787 S.E.2d 191 (Ga. Sup. Ct. 2016): 316–320
- Barrios v. Safeway Ins. Co.*, 97 So. 3d 1019 (La. Ct. App. 2012): 255
- Bates v. Dow Agrosiences, LLC*, 544 U.S. 431 (2005): 612
- Batra v. Clark*, 110 S.W.3d 126 (Tex. App. 2003): 358
- Baugh v. Beatty*, 205 P.2d 671 (Cal. Ct. App. 1949): 343–45
- Bauman v. Auch*, 539 N.W.2d 320 (S. Dak. 1995): 360
- Baur v. Veneman*, 352 F.3d 625 (2d Cir. 2003): 615
- Bekkemo v. Erickson*, 242 N.W. 617 (Minn. 1932): 272
- Belhumeur v. Zilm*, 949 A.2d 162 (N.H. 2008): 347
- Bellis v. United States*, 417 U.S. 85 (1974): 71

- Bennett v. Bennett*, 655 So. 2d 109 (Fla. Dist. Ct. App. 1995): 284, 728–29
- Bennett v. Spear*, 520 U.S. 154 (1997): 398
- Benningfield v. Zinmeister*, 367 S.W.3d 651 (Ky. 2012): 358
- Beyer v. Aquarium Supply Co.*, 94 Misc. 2d 336 (N.Y. Supr. Ct. 1977): 751
- Bhogaita v. Altamonte Heights Condo. Ass’n, Inc.*, 765 F.3d 1277 (11th Cir. 2014): 719
- Blondheim v. State*, 529 P.2d 1096 (Wash. 1975): 429
- Bluestone v. Bergstrom*, Case No. 00CC00796 (Cal. Super. Ct., Orange Cty. Mar. 28, 2001): 239
- Boeing Co. v. U.S. Dept. of the Airforce*, 616 F. Supp. 2d 178 (D.D.C. 2008): 696
- Boitz v. Preblich*, 405 N.W.2d 907 (Minn. Ct. App. 1987): 356
- Bonbrest v. Kotz*, 65 F. Supp. 138 (D.D.C. 1946): 57
- Bond v. A.H. Belo Corp.*, 602 S.W.2d 105 (Tex. Civ. App. 1980): 324, 326
- Bothell v. Two Point Acres, Inc.*, 965 P.2d 47 (Ariz. Ct. App. 1998): 361
- Boushehry v. State*, 648 N.E.2d 1174 (Ind. Ct. App. 1995): 183–85
- Bradwell v. State*, 83 U.S. 130 (1872): 54, 55
- Brady v. White*, 2006 LEXIS 390 (Del. Super. Sept. 27, 2006): 357
- Branson v. Price*, 2015 U.S. Dist. LEXIS 126652 (D. Colo. Sept. 21, 2015): 257, 258
- Braun v. York Properties, Inc.*, 583 N.W.2d 503 (Mich. Ct. App. 1998): 358
- Brooks Brann v. Patti Dalby*, Civil No. 99HL04290 (Cal. Super. Ct., Orange Cty. 2001): 750
- Brosius v. Barker*, 136 S.W. 18 (Mo. Ct. App. 1911): 59
- Brousseau v. Rosenthal*, 433 N.Y.S.2d 285 (1980): 289–91
- Brower v. Daley*, 93 F. Supp. 2d 1071 (N.D. Cal. 2000): 871, 872
- Brower v. Evans*, 257 F.3d 1058 (9th Cir. 2001): 872
- Brown v. Battle Creek Police Dep’t*, 844 F.3d 556 (6th Cir. 2016): 256, 257, 260
- Brown v. Frontier Theaters, Inc.*, 369 S.W.2d 299 (Tex. 1963): 324, 326
- Brown v. Muhlenberg Township*, 269 F.3d 205 (3d Cir. 2001): 238, 259
- Bueckner v. Hamel*, 886 S.W.2d 368 (Tex. Ct. App. 1994): 299
- Burdeno v. Amperse*, 14 Mich. 91 (1866): 54
- Burgess v. Shampooch Pet Industries, Inc.*, 35 Kan. App. 2d 458, 463 (2006): 315
- Burgess v. Taylor*, 44 S.W.3d 806 (Ky. Ct. App. 2001): 241–44
- Burke v. McKay*, 679 N.W.2d 418 (Neb. 2004): 361
- Cabisca v. City of Rochester*, 2017 U.S. Dist. LEXIS 154295 (W.D.N.Y. Sept. 21, 2017): 258
- California Veterinary Medical Ass’n v. City of West Hollywood*, 152 Cal. App. 4th 536 (2007): 196–202
- Californians for Humane Farms v. Schafer*, 2008 U.S. Dist. LEXIS 74861 (N.D. Cal. Sept. 29, 2008): 514
- Campbell v. Animal Quarantine Station*, 632 P.2d 1066 (Haw. 1981): 256, 287
- Campins v. Capels*, 461 N.E.2d 712 (Ind. Ct. App. 1984): 325
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- Carl v. Resnick*, 714 N.E.2d 1 (Ill. App. Ct. 1999): 361
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 Smaxwell v. Bayard, 682 N.W. 2d 923 (Wis. 2004): 359  
 Smith v. Avanzino, No. 225698 (Cal. Super. Ct., San Francisco Cnty., June 17, 1980): 770–71  
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 Smith v. City of Detroit, 2017 U.S. Dist. LEXIS 121387 (E.D. Mich., So. Div., Aug. 2, 2017) reversed, 2018 U.S. App. LEXIS 28890 (6th Cir. Oct. 15, 2018): 267  
 Smith v. Cook, Civil Case No. CCV0303790 (Or. Cir. Ct., Clackamas Cnty. July 21, 2003): 227  
 Smith v. Pitchford, 579 N.E.2d 24 (Ill. App. Ct. 1991): 356  
 Smith v. State Farm Fire & Cas., 381 So. 2d 913 (La. Ct. App. 1980): 756  
 Smythe v. Ames, 169 U.S. 466 (1898): 71  
 Snyder v. Bio-Lab, Inc., 405 N.Y.S.2d 596 (1978): 292–93  
 Southall v. Gabel, 293 N.E.2d 891 (Ohio Muni. Ct., Franklin Cnty. 1972): 274  
 Southall v. Gabel, 277 N.E.2d 230 (Ohio Ct. App. 1971): 274  
 Spring Co. v. Edgar, 99 U.S. 645 (1879): 37  
 St. Petersburg Kennel Club, Inc. v. Smith, 662 So. 2d 1270 (Fla. Dist. Ct. App. 1995): 21–22  
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 State ex rel. Emmons v. Hollenbeck, 394 S.W. 2d 82 (Mo. Ct. App. 1964): 77  
 State ex rel. Michelson v. Superior Court, 251 P.2d 603 (Wash. 1952): 77  
 State ex rel. Miller v. Claiborne, 505 P.2d 732 (Kan. 1973): 10, 217  
 State ex rel. Physicians Committee for Responsible Medicine v. Board of Trustees of Ohio State Univ., 843 N.E.2d 174 (Ohio 2006): 692  
 State of Cal. v. Frito-Lay, Inc., 474 F.2d 774 (9th Cir. 1973): 77  
 State of Missouri v. MOARK, Case No. 05NW-CR1568 (Mo. Cir. Ct., Newton County, filed July 29, 2005): 545  
 State of New Jersey v. ISE Farms, Inc., Appeal No. A–45–00 (N.J. Super. Ct. Law Div. Mar. 8, 2001): 545  
 State of New Mexico ex rel. King, Atty General v. Vallet Meat Co., et al., No. D–101–CV–2013–03197 (N.M. Dist. Ct., Santa Fe County, Jan. 17, 2014): 603  
 State of Oregon v. Hess, 273 Or. App. 26 (2015): 100  
 State v. Adjustment Dept. Credit Bureau Inc., 483 P.2d 687 (Idaho 1971): 153  
 State v. Buford, 331 P.2d 1110 (N.M. 1958): 11, 216  
 State v. Cleve, 980 P.2d 23 (N.M. 1999): 12–16  
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 State v. Fessenden/Dicke, 355 Or. 759, 769–70 (2014): 72, 138  
 State v. Hershey, 286 Or. App. 824, P.3d 256 (Or. Ct. App. 2017): 134–38  
 State v. Kuenzi, 332 Wis. 2d 297 N.W. 2d 222 (Wis. Ct. App. 2011): 176–82  
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 State v. Miner, 556 N.W.2d 578 (Minn. Ct. App. 1996): 477–81  
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# Preface to the First Edition, 2000

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For over five years, we have been asked the same question when we inform colleagues and friends that we teach or practice animal law: “What is ‘Animal Law’?” That repeated inquiry made clear the need for this casebook; you are reading our answer. Since it is the first on the subject, we acknowledge and accept the responsibility of introducing this new and developing area to many of our readers. We also recognize the crucial role this book can play in increasing awareness, practice and education of animal law.

Our introductory chapter deals in part with the definition of “animal”—something we thought was obvious before we began studying the area. Even prefatory to that, we must define “animal law”—for our readers as well as for those who will ask them the same question we have been asked. Quickly-phrased definitions are inherently unsatisfactory, but we will provide one as a starting point: Animal law is, in its simplest (and broadest) sense, statutory and decisional law in which the nature—legal, social or biological—of nonhuman animals is an important factor. After reading this book and/or taking a course in animal law, students and practitioners will better understand and be able to articulate their own definition.

Animals appear in cases of all sorts, and we notably do not define animal law to mean “any case with an animal.” A few illustrations may be helpful here. A personal injury lawsuit for damages related to plaintiff’s ingestion of contaminated meat is not animal law, even though the meat involved was part of an animal. Compare the *Provimi Veal* case in which plaintiffs claimed damages because the veal they bought was not properly labeled, allegedly subjecting them to unknown dangers. That case *is* animal law—not because meat was involved but because plaintiffs’ thinly-veiled agenda was to increase protection of veal calves, or perhaps to stop veal production. As another paired example, consider a breach of contract action involving the sale of horses. If the horses are simply the chattel in a dispute over delivery or financial terms, the case is probably not animal law—although their current status as legal property is a fundamental assumption in the case. If, however, the case focuses on the horses’ inability to perform (e.g., to race or breed), or to get along with other horses, it might be an animal law case.

These scenarios are not meant to clarify or confuse (although they may do some of each). Rather, they demonstrate that, while there is no defining hallmark, with time one knows an animal law case when one sees it. What should become apparent from a glimpse at the Table of Contents is that the unique status and qualities of

nonhuman animals affect every area of the law. What is not immediately obvious—but should become so—is that each affected area of the law must be adapted to deal with those qualities.

Animal law as a matter of statute is easier to identify and define. Statutes affecting the use and abuse, sale and management, protection and killing of animals are all part of animal law—and we could have produced a four-volume casebook solely on statutory animal law. Instead we have hand-picked a limited sampling of cases and statutes by way of introduction. As with any general survey course, there are many statutes, cases and issues not even considered here that may merit considerable study.

As we publish this book, animal law remains a frontier subject in both courts and law schools. Its underpinnings, however, are ancient. Indeed, the opening chapter includes descriptions of a period when nonhuman animals were defendants punished for their “crimes” against humans. They were even represented by counsel. In one case, the defendants, a group of rats, entered pleas in abatement arguing (through counsel) they could not be prosecuted or compelled to appear because they could not travel to the courthouse safely.

A collective sigh of relief should be breathed here. Our view of animal law includes *only* as a historical footnote the time when nonhuman animals were criminal defendants. This is a course and a legal specialty heading on four legs into the millennium. Much like the nascent environmental law of the late 1950s and 1960s, and the growth in courses under that name in the 1970s and 1980s, animal law is a monolithic, ascending field with a very large wingspan.

One other important note. This is affirmatively *not* a book about animal rights law. Since we take the prerogative of definition, our version of animal law is not synonymous with “animal rights” activism or with any particular political, moral or ethical agenda. Rather, it is an objective and logical specialization of a challenging area—one with a growing number of cases and statutes, increasing public and practical interest, and significantly different historical, legal and philosophical foundations than most other law school courses. We acknowledge some of the cases discussed here were brought by animal protection groups aiming to establish “rights” for nonhuman animals in our society. (*Provimis Veal* might be one example.) Certainly the question of what rights animals should or do have will be raised as a natural consequence of reading the casebook. Our collective personal goal, though, is to survey the field overall and raise awareness and consciousness of challenging and uncommon legal issues. It is our hope the casebook and any corresponding course would be as stimulating and pertinent to the meat-eating hunter as to the ethical vegan or vegetarian.

Each of us has taught one or more Animal Law courses over the past five years; in that short time the number of animal law classes and court cases, as well as public interest in the field, has grown considerably. It appears the trend will continue and animal law as a legal discipline is here to stay.

We believe there has been a reticence in many legal quarters to teach, learn or practice in the area specifically because of the absence of meaningful assistance and coverage. Thus the other great motivator for our “answer” to the question about the nature of animal law: We hope this casebook will serve as a valuable guide to students and professors stepping onto this new frontier and provide more law schools with a template for animal law courses of their own. Our greatest wish is that our readers be stimulated to work in the field and become able advisors to and practitioners in a burgeoning herd of animal law attorneys.





# Preface to the Sixth Edition

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It is hard to believe that the First Edition of *Animal Law* was published almost 20 years ago in 2000. Now, five editions later, literally thousands of lawyers and others have embraced the academic and real-world applications of animal law, and we take some pride in knowing that this book is part of a well-established, multidisciplinary, highly effective legal field of new principles and doctrines that have changed the way the world views animals. Animal law's effect is not just in the law schools, legislatures and courts, but in a shifting societal understanding of the mechanisms of social change for animals.

As we stated in the Preface to the Fifth Edition, the field is now active and attractive to commentators, practitioners and academics who see the challenging issues we face, and to more and more individuals who are part of the changing landscape of the area. Animal law sections of local and state bar associations continue to grow in number and importance, with the American Association of Law Schools and the American Bar Association doing their part to encourage and promote consideration of new ideas to further advance the discussion.

With this rapid growth comes the need for an update of this casebook. Our efforts this time have mirrored those of past revisions, seeking and incorporating input from all types of users of the book. The idea was to continue to improve the text to provide more informative, current, and useful guides to the areas addressed here.

As in the past, much of the prior editions' text still remains, but throughout the book we have added recent cases and removed those that now may be less relevant given the new cases that abound. This edition includes discussion of new legislation and addresses ideas that have become more significant or are more commonly raised. We have also added a new section on the "Ag-Gag" laws that have been the subject of attention over the past few years.

With our eyes on course structure and the shifting approaches taken by practitioners, many tough decisions had to be made about which cases, issues and areas would be included and which would be omitted. We adhered in large part to the original definition of animal law stated in the Preface to the First Edition and believe that the current version presents the opportunity to discuss virtually every issue pertinent to the field as it now exists.

Of course, because animal law has grown so rapidly and expansively, our coverage of each given topic must necessarily become more condensed and summary in fashion. At this point, *Animal Law* is like most casebooks in that it cannot possibly

include all aspects of each issue raised. But we have endeavored to include cases and extensive Notes that will stimulate discussion and thought among our readers and raise questions about topics not specifically addressed in the text.

As we have said before, we remain extremely grateful, honored and privileged to have contributed to the field through this casebook, especially considering the fact that this text may be used by many as an introduction to the major concepts animal lawyers face, or as a starting point for future exploration by burgeoning practitioners.

# Acknowledgments

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Bruce Wagman thanks Deborah for everything, and all the animals, in and out of the house, for everything else.

Sonia Waisman dedicates this edition to Pablo and Lola, and in loving memory of Wilma, Freddie and Mooki.

Pamela Frasch thanks Victor and Elizabeth Kisch for their constant support, and dedicates this book in loving memory to Beverly Frasch, Donna Mae Hanson, Jenny, Ruby, and Abby.

This book is dedicated to all animals.



# Editors' Note

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Most of the cases and other materials appearing in these pages have been edited. The deletion of sentences is indicated by ellipses; the deletion of full paragraphs is indicated by asterisks; the deletion of citations is not indicated. Most footnotes have been excised. The remaining footnotes retain their original numbering. Editors' footnotes are lettered.

The editors confirmed that all website links referenced in the narratives and Notes in this edition were functioning properly as of publication. However, these links are not within our control and we recognize that URLs can change without notice and that links sometimes malfunction. We apologize if that occurs with any of the links referenced in this book.

The editors gratefully acknowledge permission to reprint the following secondary sources:

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